

ORDER NO. 4010

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Priority Mail Contract 160 (MC2016-29)
Negotiated Service Agreements

Docket No. CP2016-35

ORDER APPROVING AMENDMENT TO
PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued July 21, 2017)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Amendment to Priority Mail Contract 160, with Portions Filed Under Seal, July 12, 2017 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 2891, the Commission approved the Priority Mail Contract 160 negotiated service agreement (Existing Agreement).²

In the FY 2016 Annual Compliance Determination (ACD), the Commission found that the Existing Agreement was not in compliance with 39 U.S.C. § 3633(a)(2) requirements for attributable cost coverage in FY 2016.³ In a report responding to the ACD, the Postal Service noted that the Existing Agreement would be amended, with filing expected by the end of May.⁴ On May 31, 2017, Chairman's Information Request No. 30 was issued, which requested an update because the Postal Service had not filed an amendment or notice of termination.⁵

In a response filed on June 7, 2017, the Postal Service indicated the customer had signed the Amendment and it would be filed within two weeks.⁶ The customer executed the Amendment on June 22, 2017, and the Postal Service executed it on June 30, 2017. Notice at 1. The Postal Service states that the delay in filing the Amendment resulted from a delay on the customer's end, and it was an "inadvertent error" that the Commission was misinformed about the execution of the Amendment on June 7, 2017. Notice at 1.

On July 12, 2017, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On July 13, 2017, the Commission issued a

² See Docket Nos. MC2016-29 and CP2016-35, Order Adding Priority Mail Contract 160 to the Competitive Product List, December 17, 2015 (Order No. 2891). The contract was later amended. See Order No. 3408, Order Approving Amendment to a Priority Mail Negotiated Service Agreement, July 5, 2016. The Postal Service had earlier filed a notice informing the Commission of an amendment to the contract; however, that amendment was withdrawn. Order No. 3709, Order Closing Docket, December 28, 2016.

³ Docket No. ACR2016, *Annual Compliance Determination*, March 28, 2017, at 82 (FY 2016 ACD).

⁴ First Response of the United States Postal Service to Commission Requests for Additional Information in the FY 2016 Annual Compliance Determination, April 27, 2017, at 2.

⁵ Docket No. ACR2016, Chairman's Information Request No. 30, May 31, 2017 (CHIR No. 30).

⁶ Docket No. ACR2016, Responses of the United States Postal Service to Questions 1-3 of Chairman's Information Request No. 30, June 7, 2017, question 1 (Responses to CHIR No. 30).

notice reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁷

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice. Notice at 2. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.* The Postal Service asserts that the Amendment increases prices in response to the Commission's directive in the FY 2016 ACD. See *id.* at 1-2.

II. COMMENTS

Comments were filed by the Public Representative.⁸ No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, the financial model filed under seal, and the data provided by the Postal Service in the FY 2016 Annual Compliance Report (ACR). PR Comments at 2. Based on that review, he concludes that the Existing Agreement, as amended, should generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a). See *id.* He also notes that the Postal Service will continue to file revenue and cost data in future ACRs, and this data will enable the Commission to ensure compliance. *Id.*

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's

⁷ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, July 13, 2017.

⁸ Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Contract 160, July 18, 2017 (PR Comments).

institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Existing Agreement did not cover its attributable costs in FY 2016. FY 2016 ACD at 82. The Amendment raises prices in order to ensure the product covers its attributable costs going forward. See Notice at 1, 2.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). In addition, the rate adjustment provision in section I.J of the Existing Agreement, as amended, should allow the amended agreement's revenues to cover costs for the duration of its term.⁹ The Commission will continue to review the cost coverage of the amended agreement in its ACD to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective two days after the date that the Commission completes its review. Notice at 2. The Amendment states that the customer will pay Tier 5 rates from the effective date until June 30, 2017, and “[p]ricing for subsequent quarters will continue to

⁹ Docket Nos. MC2016-29 and CP2016-35, Request of the United States Postal Service to Add Priority Mail Contract 160 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 8, 2015, Attachment B at 3 (Request).

be determined on a rolling four quarter average.” *Id.* Attachment A at 1. Because the Amendment was not filed until after June 30, 2017, this provision is moot, and when the Amendment takes effect, prices will be determined on a rolling four quarter average.

The Existing Agreement, as amended, is set to expire three years after the initial effective date unless, among other things, either party terminates the contract with 30 days’ written notice to the other party or it is renewed by mutual agreement.¹⁰ If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Regarding CHIR No. 30 and the Postal Service’s Responses to CHIR No. 30, the Commission expects the Postal Service to provide complete and accurate information in future responses or correct the record in a more prompt manner.

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Contract 160 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary

¹⁰ Request, Attachment B at 4. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission’s implementing regulations of 39 C.F.R. part 3015.